

## **REMARKS/ARGUMENTS**

This Response to Office Action is filed within six months of the mailing date of the Office Action from the Examiner mailed July 13, 2006. Reconsideration and withdrawal of the rejections set forth in the Office Action is respectfully requested. Claims 1-3, 10-12, 19, 25 and 31-44 are pending in this application.

### **Interview Summary**

The applicants thank the Examiner for granting a telephonic interview on September 27, 2006. In the interview it was agreed that the cited prior art did not include streaming software technology. The applicants have amended claims 1, 3, 10, 12, 19, 25, 31-33, 35, 36, 38-41, and 43, as suggested by the Examiner, to include the language "streaming software files."

### **Claim Objections**

The applicants thank the Examiner for identifying a typographical error in claim 35, which has been amended for the sole purpose of correcting the typographical error.

### **101 Rejections**

The applicants respectfully disagree with the Examiner regarding the 101 rejections, but acknowledge the current trend in the USPTO to reject propagated signal claims. The case cited by the Examiner, Warmerdam, includes no discussion regarding propagated data signals.

"Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter... may obtain a patent therefore..." 35 USC §101. Propagated data signals are physical (if ephemeral) structures that must be manufactured by a machine that is programmed to do so, either directly or indirectly, by a human. The usefulness of propagated data signals to one of skill in the

relevant arts is undisputed in the relevant industry. Thus, propagated data structures are useful manufactures that, if invented, may be patented.

The applicants have amended the claims to expedite issuance of the claims in this matter. However, the applicants reserve the right to reintroduce the original claims when the courts clarify that the USPTO's recently raised challenges to the patentability of propagated data signals have been addressed.

### **112 Rejections**

The applicants respectfully disagree that claims 2, 11, 19, and 25 were unclear.

"Such as" was used as shorthand for zero or more elements selected from a Markush group that includes common file operations, and has such meaning in the English language. "If stated in the claims, examples and preferences >may< lead to confusion over the intended scope of a claim. ***In those instances where it is not clear*** whether the claimed narrower range is a limitation, a rejection under 35 U.S.C. 112, second paragraph should be made" (emphasis added) MPEP 2173.05(d).

Nevertheless, for the sole purpose of expediting issuance of claims in this case, the applicants have amended the claims. The amendments do not change the meaning of the claims or the scope. The applicants respectfully request that the Examiner to state that the amendments change the meaning or scope of the claim if he believes that to be the case, so that the applicants will have the opportunity to reintroduce the original claims and argue that they are proper under 112.

### **THE PRIOR ART**

Since agreement was reached in the interview of September 27, 2006, that the cited prior art does not include streaming software technology, a detailed discussion of the prior art is deemed unnecessary. For at least this reason, the applicants respectfully request the Examiner withdraw the 102(e) rejections of all claims.

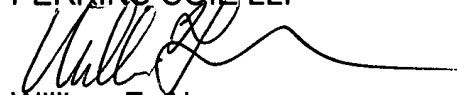
**CONCLUSION**

In view of the foregoing, Applicants submit that all the claims pending in the application patentably define over the prior art. The Applicants respectfully requests the Examiner withdraw rejections of all claims. A Notice of Allowance is therefore respectfully requested.

If extra fees are due, please charge our Deposit Account No. 50-0665 from which the undersigned is authorized to draw.

If in the opinion of the Examiner, a telephone conference would expedite the prosecution of the subject application, the Examiner is encouraged to call the undersigned at (650) 838-4305.

Respectfully Submitted,  
PERKINS COIE LLP



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